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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,902	04/13/2004	R. Payson Moreland	P06107US01	3996
22885	7590	03/23/2006	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			LOCKETT, KIMBERLY R	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/822,902

Applicant(s)

MORELAND, R. PAYSON

Examiner

Kim R. Lockett

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/30/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28 is/are allowed.
- 6) ☒ Claim(s) 1-27 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9, 14, 29, and 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polley in view of Atkin.

Polley discloses the use of a textured apparatus(47) for use with a stringed instrument pick that does not change the function of a pick, the apparatus having a grip portion on a first surface comprising a relatively thin piece of material having the following properties (see figure 1): resists sliding and promotes gripping by human fingers; is applicable to the gripping portion on the first surface (column 2, lines 65-68). The apparatus as disclosed by Polley also discloses the use of material that fits within the perimeter dimensions of a pick, that can be retrofitted to an existing pick, and is adapted for various sized picks and has removable adhesion to a pick by surface tension without residue.

Polley does not disclose the specific use of material that is adapted for removably adhesion to a pick.

Atkin (US 2002/0178891A1) discloses the use of a pick with a material that is adapted for removably adhesion to a pick (see figure 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Polley with the material as disclosed by Atkin (US 2002/0178891A1) in order to provide a pick with adhesion capabilities.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polley in view of Atkin and Jonathan.

Polley and Atkin do not disclose the specific use of a flexible material.

Jonathan discloses the use of an apparatus for use with a stringed instrument pick that is a rubbery moldable apparatus(3) with a smooth surface for use with a stringed instrument pick.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Polley with the adhesion

Art Unit: 2837

capabilities as disclosed by Atkin and the rubbery material as disclosed by Jonathan in order to provide a non-slip surface between a pick and musician's finger.

5. Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polley in view of Atkin and US 2002/0108483A1.

Polley and Atkin do not disclose the use of a thickness variance.

US 2002/0108483A1 discloses use of an apparatus for use with a stringed instrument pick with a raised thickness variance (page 2, column 2, lines 22-30) on the order of the pick to which it's to be applied.

Polley, Atkin, and US 2002/0108483A1 do not disclose the specific diameters as disclosed by the applicant. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the diameters to those as claimed by the applicant since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Polley with adhesion capabilities and the thickness variance as disclosed by US 2002/0108483A1 in order to provide a pick that keeps a pick from sliding.

7. Claim 28 is allowed.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-27 and 29 have been considered but are moot in view of the new ground(s) of rejection.

9. Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center at 703-872-9306.

For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose telephone number is **800-786-9199**. Assistance is also available on the Internet at [www.uspto.gov](http://www.uspto.gov).

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett whose telephone number is (703) 308-7615, after 2/3/04 my new number will be (571) 272-2067**. The examiner can normally be reached on Tuesday through Friday from 6:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107.

  
**KIMBERLY LOCKETT**  
**PRIMARY EXAMINER**